

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PROVINCE OF THE HOLY NAME,
INC.,

No. C 06-04127 SBA

Plaintiff,

ORDER

[Docket No. 48]

v.

CNA CASUALTY OF CALIFORNIA;
PACIFIC INDEMNITY COMPANY;
HARTFORD ACCIDENT AND
INDEMNITY COMPANY;
EMPLOYERS REINSURANCE
CORPORATION; AND DOES 1-100,

Defendants.

Currently before the Court is plaintiff Province of the Holy Name, Inc.'s Motion Pursuant to Federal Rule of Civil Procedure 15(a) for Leave to File a Second Amended Complaint [Docket No. 48]. Having read and considered the arguments presented by the parties in the papers submitted to the Court, the Court finds this matter appropriate for resolution without a hearing. The Court hereby GRANTS plaintiff's Motion for Leave to File a Second Amended Complaint.

BACKGROUND

The plaintiff, a Catholic religious order, is named as a defendant in various lawsuits in which the claimants allege sexual abuse by priests who are members of the order. Plaintiff filed the instant against various insurance companies for failing to defend plaintiff in the underlying action pursuant to various insurance policies. Plaintiff seeks leave to File a Second Amended Complaint ("SAC") to address to the following three issues. First, the SAC removes from the action plaintiff's allegations and

1 requests for relief concerning the duty to indemnify by certain defendants. Second, the SAC updates the
2 current status of the litigation by removing the cause of action for breach of contract and bad faith
3 against defendant Pacific Indemnity and all causes of action against defendant Hartford Accident and
4 Indemnity Company. Third, the SAC adds breach of contract and bad faith claims against defendant
5 Employers Reinsurance Corporation.

6 LEGAL STANDARD

7 Federal Rule 15(a) provides that:

8 A party may amend the party's pleading once as a matter of course at any
9 time before a responsive pleading is served or, if the pleading is one to
10 which no responsive pleading is permitted and the action has not been
11 placed upon the trial calendar, the party may so amend it at any time within
12 20 days after it is served. Otherwise a party may amend the party's pleading
13 only by leave of court or by written consent of the adverse party . . .

14 Fed. R. Civ. P. 15(a). Under Federal Rule 15, "leave [to amend] shall be freely given." *Id.* This policy
15 is "to be applied with extreme liberality." *Owens v. Kaiser Foundation Health Plan, Inc.*, 244 F.3d 708,
16 712 (9th Cir. 2001).

17 ANALYSIS

18 Plaintiff argues that it will be prejudiced if it is not granted leave to amend because, as the duty
19 to indemnify claims are closely related to the claims in the underlying action, discovery proceedings in
20 the indemnity action may prejudice plaintiff's defense in the underlying action. *Haskel Inc.v. Sup. Ct.*
21 *of Los Angeles Co.*, 33 Cal. App. 4th 963, 979 (1995)(when a third party seeks damages on account of
22 the insured's negligence, and the insurer seeks to avoid providing a defense by arguing that the insured
23 harmed the third party by intentional conduct, the potential that the insurer's proof will prejudice its
24 insured in the underlying litigation is obvious). Plaintiff further argues that since the underlying action
25 is ongoing, the indemnity claims are not ripe for adjudication.

26 Defendants did not file an opposition to the motion, but instead filed a "response" in which they
27 sought clarification from plaintiff as to whether plaintiff contends that the proposed amendment will
28 affect the scope of discovery in the action. Defendants have provided the Court with no reason to not
grant the motion.

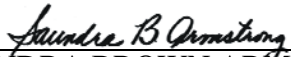
As the policy of allowing leave to amend is “to be applied with extreme liberality,” *Owens*, 244 F.3d at 712, the Court grants plaintiff leave to amend.

CONCLUSION

IT IS HEREBY ORDERED THAT plaintiff’s Motion Pursuant to Federal Rule of Civil Procedure 15(a) for Leave to File a Second Amended Complaint [Docket No. 48] is GRANTED. Plaintiff is granted 30 days from the date of this order within which to file and serve the amended complaint. Pursuant to FRCP 15(a), the defendants shall respond to the amended complaint within 10 days of service.

IT IS SO ORDERED.

Dated: 5/8/07


SAUNDRA BROWN ARMSTRONG
United States District Judge